

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.) CRIMINAL CASE NO. CCB-17-106
DANIEL THOMAS HERSL,)
Defendant.)
_____)

Friday, June 22, 2018
Courtroom 1A
Baltimore, Maryland

BEFORE: THE HONORABLE CATHERINE C. BLAKE, JUDGE

MOTION FOR NEW TRIAL - SENTENCING

For the Plaintiff:

Leo J. Wise, Esquire
Derek E. Hines, Esquire
Assistant United States Attorneys

For the Defendant:

William Purpura, Jr., Esquire

Also Present:

Gina Swillo, U.S. Probation Officer
Special Agent Kevin Bodmer, FBI

Reported by:

Douglas J. Zweizig, RDR, CRR
Federal Official Court Reporter
101 W. Lombard Street, 4th Floor
Baltimore, Maryland 21201

Douglas J. Zweizig, RDR, CRR - Federal Official Court Reporter

1 **THE COURT:** -- mental health.

2 Is there anything specific by way of recommendation to
3 the Bureau of Prisons that you would be looking for? I think
4 designation of the facility is complex because of his prior
5 employment, but --

6 **MR. PURPURA:** Actually, obviously, I hope -- and I
7 spoke to the BOP, and hopefully they can do what's appropriate.
8 I spoke to Mr. Hersl, and at first his thought would be that he
9 wanted to be outside of the jurisdiction for safety purposes,
10 but now I think he's changed that.

11 I'm going to ask the Court to recommend FCC at
12 Fairton, New Jersey. But whatever the -- I'm sure whatever the
13 BOP feels is appropriate in this particular case, they'll do.

14 **THE COURT:** Okay. All right. Thank you.

15 Anything else --

16 **MR. PURPURA:** Nothing. Thank you.

17 **THE COURT:** -- that anybody wants to be heard on?

18 Conference at the bench.

19 (It is the policy of this court that every guilty plea and
20 sentencing proceeding include a bench conference concerning
21 whether the defendant is or is not cooperating.)

22 **THE COURT:** Okay. All right. As you've all heard me
23 say before, and it doesn't change, sentencing is a very
24 difficult process. There are many things that have to be
25 considered in this case.

1 I'll start with the nature and circumstances of the
2 offense and what are the harms caused by the conduct that the
3 jury did find had been proved as to Mr. Hersl.

4 And, of course, there are harms to the individual
5 victims whose money was taken. There was undoubtedly a
6 wrongful use of official force. The gun and the badge enabled
7 taking money, which, again, according to the jury's verdict,
8 and I think the law, was a robbery; but whether it's robbery or
9 theft, this was accomplished by the wrongful use of Mr. Hersl's
10 police authority.

11 It is an abuse of the public trust. Officers take an
12 oath to uphold the law. That gives them the right to have that
13 gun and that badge so they can enforce the law, not break it.

14 And the harm that's done to what's already a level of
15 distrust between many in our community and the police is only
16 deepened by these kinds of proven crimes.

17 As has been referenced, the conduct of Mr. Hersl and
18 others has resulted, it would appear, in the dismissal of
19 probably hundreds -- or will result in the dismissal of
20 probably hundreds of other criminal cases, some perhaps
21 involving people wrongly convicted, some people who had, in
22 fact, committed crimes, but those must be dismissed because the
23 credibility of the officers on which the convictions rested has
24 been destroyed.

25 The overtime fraud obviously took money from a city

1 that doesn't have any money to spare. And this overall conduct
2 has, as I've said before, made more difficult the job of the
3 majority of the men and women in uniform here in the city who
4 face danger and hardship every day trying to protect the
5 public, and they do that now in the face of this increased lack
6 of trust.

7 And as I've said before, it strikes at the foundation
8 of our entire criminal justice system if judges and juries
9 can't rely on the word of sworn law enforcement officers
10 because they're covering up their own crimes, whatever those
11 crimes may be. Now, so we have very, very serious offenses
12 here.

13 Obviously, I also need to consider the history and
14 characteristics of Mr. Hersl. He's been a police officer for a
15 long time. I don't doubt -- and as his brothers and others
16 have said -- that he has put himself in harm's way in the
17 course of that employment, that he has, in fact, protected
18 others, saved lives, been involved in very stressful and
19 disturbing situations.

20 I'm sure that he has been and continues to be,
21 obviously, very loyal to his family, to his friends. I'm sure
22 he's done good things for his community and appreciates the
23 letters of support that have been offered for him and the
24 people that are here for him today, and many of whom were
25 present during the trial, of course. And I do take that all

1 into account, as I did with others.

2 The letters that have been presented, and in
3 particular Mr. Hersl's letters, certainly show his pain, his
4 faith, his love of family, and that he is -- obviously already
5 has been and is being punished again. As is true for the other
6 defendants in this case, it's reasonable to think that serving
7 time in the Bureau of Prisons is -- it's difficult for anyone.
8 It may be of particular difficulty for a former police officer.

9 On the other hand, to reflect the seriousness of the
10 offense and promote respect for the law and provide just
11 punishment, I again say there must be a significant period of
12 incarceration.

13 I don't think there's an issue of specific deterrence
14 or recidivism as to Mr. Hersl.

15 But this is clearly one of the cases in my career as a
16 judge where the factor of general deterrence has great
17 importance. There must be a clear message that officers who
18 break their oaths by robbery, by fraud, by other crimes will be
19 prosecuted and will be justly punished for that conduct.

20 Finally, there is the factor of relative culpability.
21 Mr. Hersl was not a supervisor, was not a sergeant like two of
22 the others that I have sentenced. He was a fairly senior
23 member of the police force, but not a supervisor.

24 He apparently has committed a relatively similar
25 number of robberies with Mr. Taylor.

1 There is some indication, there was some indication of
2 drug involvement as to both Mr. Hersl and Mr. Taylor, but,
3 frankly, nothing like the scale or the proof that was offered
4 in regard to Sergeant Jenkins, who received the highest
5 sentence in this case.

6 I balance -- yes, he was a more senior member than
7 Mr. Taylor. I do note that to some degree, not in a guideline
8 sense, I do believe there has been some acceptance of
9 responsibility by Mr. Hersl.

10 And when I consider all those factors, I find that the
11 sentence that was imposed on Former-Officer Taylor is the same
12 sentence that is fair, reasonable, and just for Mr. Hersl, that
13 is 18 years. That is 216 months in the custody of the Bureau
14 of Prisons.

15 That is -- I will state that, and you'll tell me if
16 there's any lawful legal objection to anything that I'm saying,
17 but I believe it should be 18 years on Counts 1 and 2 and 5,
18 concurrent, of course, with credit for time served.

19 That there would be a period of three years of
20 supervised release, concurrent on each count to follow, with
21 special conditions of participating in any alcohol abuse
22 treatment program the probation officer recommends and any
23 mental health counseling or treatment the probation officer
24 recommends and providing financial information to the
25 Probation Office.

1 In that regard, I'll just note briefly, again, we
2 didn't discuss restitution, but is that the same --

3 **MR. WISE:** We're preparing a global restitution order
4 which we'll be submitting -- circulate to counsel and be
5 submitting after this sentencing and before the other -- I
6 think the remaining sentencings.

7 **THE COURT:** The restitution will be deferred.

8 His financial circumstances don't permit a fine.

9 There is a required \$100 special assessment on each
10 count. That's a total of \$300 that I will impose.

11 I'll certainly make the recommendation to the Bureau
12 of Prisons that they consider a designation to FCI Fairton so
13 he can be close to his family. That's, again, up to the Bureau
14 of Prisons. And there are a lot of security issues to
15 consider.

16 And have I left anything out? Anything I have not
17 addressed? Any legal objection to that sentence or not
18 covered?

19 **MR. WISE:** Not from the United States, Your Honor.

20 **MR. PURPURA:** Your Honor, I might have missed it,
21 supervised release?

22 **MR. WISE:** Three years.

23 **MR. PURPURA:** Oh, she said that? Okay.

24 **THE COURT:** I'm sorry?

25 **MR. PURPURA:** I didn't -- I missed it. You mentioned

1 it, supervised release. There's nothing further.

2 **THE COURT:** Sure. Yes. Three years concurrent.

3 I have a note from our courtroom deputy. Counts 1 and
4 2 of the original indictment?

5 **MR. WISE:** There was an original indictment. I don't
6 recall if we dismiss after trial. I don't think we do in case
7 there's an issue on appeal.

8 **THE COURT:** Because of the appeal?

9 **MR. WISE:** Right.

10 **THE COURT:** Okay. All right.

11 Mr. Hersl, obviously, as I'm sure you're aware, you do
12 have a right to appeal, both from the result of the trial, the
13 convictions, and from this sentence. You will consult with
14 Mr. Purpura about that.

15 But any appeal would need to be noted within 14 days.

16 Do you understand that, sir?

17 **THE DEFENDANT:** Yes, Your Honor, I understand.

18 **MR. PURPURA:** Your Honor, just on that issue, the
19 Court, based on a filing by Mr. Hersl, had found that Mr. Hersl
20 presently does not have funds for counsel. And would that hold
21 for the appeal? Because --

22 **THE COURT:** That, I believe, will be up to the
23 Fourth Circuit.

24 **MR. PURPURA:** Fourth Circuit.

25 **THE COURT:** But if you note the appeal, it is up to